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MAY 27 2004

OFFICE OF PETITIONS

In re Application of :  
Liu, et al. :  
Application No. 10/727,677 : ON PETITION  
Filing Date: December 4, 2003 :  
Attorney Docket No.: R74.12-0001 :

The above-identified application has been referred to the Office of Petitions for consideration of the "PETITION FOR CORRECTED FILING RECEIPT," filed April 12, 2004. This petition is being treated under 37 CFR 1.10(d) as a petition to accord the above-identified application a filing date of December 4, 2003.

~~Petitioners allege that the application was deposited into USPS Express Mail service on December 4, 2003.~~

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a).

(Emphasis supplied). Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was

the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

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A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

The petition filed April 12, 2003, does not include: (1) a showing that the application was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for December 4, 2003; and (2) the corroborating evidence required by the rule.

Petitioners state that the application was deposited into USPS Express Mail service on December 4, 2003, but that the "date-in" on the Express Mail label was errantly entered as December 3, 2003. Petitioners have failed to provide a copy of an Express Mail label, an Express Mail log detailing the dates, times, and manner of Express Mail deposits, or any corroborative evidence

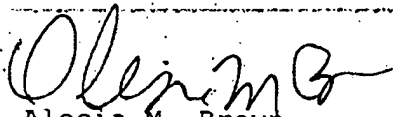
from the USPS to support petitioners' contention that the application was deposited into USPS Express Mail service on December 4, 2003.

However, a review of the USPS record (copy enclosed) concerning the delivery of the package bearing Express Mail label No. EV241973035US reveals that the package in question was accepted into Express Mail service on December 4, 2003. This evidence establishes, to the satisfaction of the Commissioner, that the present application was deposited in "Express Mail Post Office to Addressee" service on December 4, 2003. Thus, the application will be accorded that date as the filing date.

No fee is due in connection with this matter. Petitioners are entitled to a refund of the previously submitted petition fee of \$130.00. Requests for refunds should be directed to the Finance Office, Refund Division. A copy of this decision should accompany any request for refund.

This application is being forwarded to the Office of Initial Patent Examination with a filing date of December 4, 2003.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.



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Office of Petitions

Enclosure: Copy of USPS Track/Confirm Printout